

**Statement of Irvin B. Nathan
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Before the

**Committee on Government Operations
Muriel Bowser, Chair**

Regarding Bills 19-713, 19-730, and 19-733



**Office of the Attorney General for the
District of Columbia**

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**John A. Wilson Building
1350 Pennsylvania Avenue, NW
Room 412
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INTRODUCTION AND OVERVIEW

Good afternoon, Chairperson Bowser, and Members and staff of the Committee on Government Operations. I am Irv Nathan, Attorney General for the District of Columbia. On behalf of the Executive Branch of the District, I am pleased to testify before the Committee today regarding the Mayor's legislative proposals to preserve and protect the integrity of our elections process. Amid criminal convictions and allegations that have undermined public confidence in our electoral system and have led some to make unwarranted and unfounded claims that the more than 600,000 residents of this great city are unable to govern themselves, the Mayor and this Administration believe legislative campaign-finance reform should be a high priority to restore public trust in our electoral system.

Several months ago, the Mayor tasked my office with reviewing our laws and comparing them with best practices in States and other major cities that have recently revised their campaign-finance laws and making recommendations to him. The review attempted to balance the need of candidates to raise the funds necessary to get their messages out and fully inform the electorate with the need to insure the same electorate that the process is fair and open and that the resulting government is free from any taint of even the appearance of corruption. After studying our recommendations, the Mayor has authorized me to advise this Committee of his proposals. We are now working to put them into a comprehensive draft of legislation that we hope to have ready for this Committee's consideration by mid-July.

Our draft legislation will incorporate some elements of the three bills that have previously been proposed on this subject that are currently pending before this Committee, but will go well beyond them. The pending bills deal with pay-to-play in the area of government contracting (Bills 19-713 and 19-733), prohibit all corporate contributions to political campaigns

(Bills 19-713 and 19-733), and place limitations on money orders that are as strict as those placed on cash contributions (Bill 19-730). Some of the provisions in these bills would significantly improve the District's campaign-finance law and should properly be part of comprehensive legislative reform. However, two of the bills (Bills 19-713 and 19-733) also raise serious policy and constitutional concerns, which should be eliminated in the resulting legislation which emerges from this Committee. Other topics need to be addressed as well.

Our balanced and comprehensive approach will recognize (a) the importance of letting individuals, including non-incumbents, campaign effectively; (b) the value of allowing others, including organizations, to exercise their constitutional rights to disseminate their views on important public issues and to support financially the candidates they favor; and (c) the need to protect against the reality and even the appearance of corruption in the political process. The reforms we propose will ensure that the public is informed about the sources of all campaign funds; further secure the integrity of the government contracting process; limit the access and influence of lobbyists; and hold candidates and their committees more accountable for their campaign activities. We will also address stronger local enforcement of our revised campaign reform laws.

Our proposed reforms are drawn from the best practices of other jurisdictions, and from a careful assessment of the vulnerabilities in the District's current campaign-finance law. Because we are preparing comprehensive legislation, we urge the Council to await our proposal, rather than enacting piecemeal measures. Our electoral process will benefit significantly from campaign-finance reform, but that reform should be comprehensive, fully vetted, and well considered.

In highlighting the core areas of campaign-finance law that need to be reformed, I will discuss this afternoon both our proposed reforms and our agreement with and our concerns about some of the key provisions of the bills that are before the Committee today.

I. Pay to Play

A major and legitimate concern of the public is the integrity of the government contracting process in the District. For citizens to have faith in their government, they must be able to trust that when the government awards contracts or grants, it does so on the basis of merit, uninfluenced by politics or campaign contributions. Serious concerns have been raised about some past government contracting practices in the District, and we believe it is imperative to protect the contracting process from undue political influence or even the appearance of such influence.

The comprehensive legislative proposal we are preparing will provide that contractors who have, or are bidding on, significant contracts with the District are barred from making contributions to any elected public official or candidate who could be involved in the contract approval process. They will also be barred from contributing any funds to any entity in which such an elected official or candidate has a financial interest. While we think that First Amendment interests suggest that adult family members of those holding or seeking District contracts should be able to make contributions to the candidate or business of their choice, we believe they should be strictly limited in how much they can contribute to an elected official or candidate (far below the current maximums). In addition to proposed or actual contractors, we also believe that those who seek large grants from the government should be subject to similar limits. Our proposed pay-to-play measures draw on the considered experience of jurisdictions

including New York City, Philadelphia, New Jersey, West Virginia, and South Carolina, and on the analysis of legal scholars who have carefully studied and evaluated pay-to-play legislation.

We are concerned about some of the provisions in Bill 19-713, which, while well-motivated, go a step too far. The proposed bill would prohibit any District agency or department from awarding a contract to any contractor if that contractor, or anyone affiliated with it, has made significant contributions to an elected official or candidate within the past three years, or even to a political committee or political action committee. This is problematic not only because it effectively penalizes contributions to entities that may have no direct relationship to a candidate, but also because it would operate as a *de facto* contribution limit on anyone who may want to contract with the District government three years from now.

II. Disclosure

Transparency is one of the most valuable tools in the campaign-finance toolbox, not least because it informs voters about the sources of any advertisements or other solicitations that seek to influence their vote. As former Supreme Court Justice Louis Brandeis once observed, “sunlight is said to be the best of disinfectants.” Accordingly, we believe that current campaign-finance law should be improved to strengthen existing disclosure requirements. For example, though we do not support a complete ban on corporate contributions, which may be subject to attack under recent U.S. Supreme Court rulings, we strongly favor measures that will prevent individuals and corporations from using inactive corporations or corporate subsidiaries or affiliates to evade statutory limits on maximum contributions and expenditures.

To insure that controlling shareholders are not using corporations to evade dollar limitations on contributions, corporations that contribute to a candidate’s campaign should be required to identify all subsidiaries, affiliates, and controlling shareholders. Further,

contributions by a corporate entity should be attributed to the controlling shareholder and any affiliates of that entity. These disclosure requirements will allow the government, as well as the public, to identify the real donors, who have until now concealed their identities behind a corporate veil, and will also permit the Office of Campaign Finance to enforce effectively campaign contribution limitations.

We also believe that disclosure requirements, rather than strict limitations or outright bans, are the best way to deal with independent expenditures. In the last three years, both the Supreme Court and the U.S. Court of Appeals for the D.C. Circuit have ruled that when an individual or corporation independently contributes or expends money to support or oppose a candidate for elected office, any governmentally mandated cap on those contributions or expenditures would violate the First Amendment. In the recent *SpeechNow* case, the D.C. Circuit ruled that as long as a political committee is making solely independent expenditures, and is not in any way affiliated with a candidate or coordinating its efforts with the candidate, any cap or ban on contributions to that committee is unconstitutional. These rulings are, of course, binding on the District. Just this morning the U.S. Supreme Court summarily reversed the state supreme court of Montana and ruled that the *Citizens United* decision allowing corporations to make independent expenditures for candidates applies to the states as well as the federal government. We are therefore concerned about provisions in Bills 19-713 and 19-733 that would ban some or all corporate independent expenditures. Both bills would make it illegal for any corporation to make campaign contributions or expenditures to any political action committee, regardless of whether that committee has any connection to a candidate. Our campaign-finance laws must differentiate between individuals and groups who are affiliated with a candidate or party, and individuals or groups who are not.

While the courts have routinely struck down efforts to cap or prohibit independent expenditures, they have consistently maintained that robust disclosure requirements are constitutional. Although current law already requires significant disclosure by anyone who makes contributions or expenditures, we propose to bolster existing disclosure requirements in multiple ways. **First**, all disclosures required under campaign-finance law should be filed and displayed electronically. Current law lets the Director of Campaign Finance decide whether certain disclosures should be filed electronically, but we maintain that e-filing and e-disclosure should be mandatory. Across-the-board electronic disclosure promotes transparency, accessibility, and timely release of important information. **Second**, all contributions and expenditures made within the last 30 days before an election should be disclosed to the Office of Campaign Finance within 24 hours, and made viewable on the Office's website shortly thereafter. Because the last 30 days before an election often see significant amounts of last-minute contributions and expenditures, interested citizens should have the ability to identify the sources of last-minute advertisements and other solicitations. **Third**, when an independent expender files the required disclosure documents with the Office of Campaign Finance, they should be required to certify that they have not coordinated with a candidate, a committee affiliated with a candidate, or a political party. Those making expenditures should not be treated as independent unless they actually are.

III. Additional Improvements to the Process

Tightening up disclosure requirements and enacting a pay-to-play law that will safeguard the integrity of government contracting are two vital steps to improving the District's electoral system. However, more should be done. We propose four additional reforms.

A. Lobbyist Bundling

Lobbyists should be barred from bundling contributions. As individuals, lobbyists have a right to make contributions and expenditures in favor of a candidate or a committee that they support. However, when lobbyists can gather political contributions from multiple sources and present those contributions in one “lump sum” to a candidate, a candidate’s political committee, or a political party, they effectively sidestep contribution limits by combining their contributions with those of others. Moreover, when lobbyists can present significant quantities of bundled contributions to a candidate or committee, they create at least the appearance that access is being exchanged for contributions.

Our concerns about this practice mirror those raised in a 2011 report by a task force of the American Bar Association that studied the federal laws governing lobbyists. As the task force pointed out, a lobbyist’s ability to bundle significant contributions can create a “self-reinforcing cycle of mutual financial dependency” between a candidate and a lobbyist, which can become a “deeply troubling source of corruption.”¹

We therefore urge that this practice be banned. Lobbyists should be prohibited from collecting contributions from multiple contributors, taking possession of such contributions, or delivering such contributions directly or indirectly to any elected official, candidate, or any political committee affiliated with an official or candidate.

B. Money Orders

Money orders should be subject to the same limitations that cash contributions are. Right now, someone who wants to contribute cash to a candidate’s campaign can contribute only \$25.

¹ See The American Bar Association, *Lobbying Law in the Spotlight: Challenges and Proposed Improvements*, at 19-23 (2011), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/administrative_law/lobbying_task_force_report_010311.authcheckdam.pdf.

However, no such limit applies to money orders. This allows candidates to effectively circumvent cash contribution limitations by accepting money orders instead. We agree with the sponsors of Bill 19-730 that this is a problem, and so we agree that money order contributions should be subject to the same limitations that cash contributions are.

C. Candidate Accountability

Candidates should be held accountable for what their political committees do. Currently, when a candidate's committee files a report with the Office of Campaign Finance, the candidate and the treasurer must certify that the reports are accurate. However, if the report turns out to be inaccurate, the candidate is not penalized unless it can be shown that the candidate knew about the inaccuracy. This is insufficient, because the law should not encourage candidates to remain willfully blind to what their committees are doing. Candidates need to inform prospective contributors of the legal limits under which they operate, and they need to set up systems that are reasonably calculated to prevent violations of campaign-finance law. When candidates certify to the Office of Campaign Finance that their reports are accurate, they should also be required to certify that they have made their best efforts to ensure (1) that their political committees have complied with the law, and (2) that their contributors have been notified about their legal obligations.

D. OCF Funding and Leadership

The Office of Campaign Finance should receive additional funding so that it can fully carry out its newly expanded responsibilities. The Office plays a vital role in promoting compliance with campaign-finance restrictions, and recent law has vested it with even greater responsibility. In carrying out these responsibilities, OCF would benefit significantly from increased resources, which would enable it to hire additional investigative and auditing

personnel, and potentially to purchase more sophisticated software programs. Although this will require precious government resources, ensuring the integrity of our electoral process and the resulting government is a critical investment.

CONCLUSION

Further campaign-finance reform can dramatically improve the District's electoral system by increasing transparency and combating both actual and perceived corruption. In the next several weeks, we will prepare a comprehensive package of campaign-finance reforms for this Council's consideration. We look forward to working with the Council to enact bold, comprehensive and systemic reforms.

Thank you, and I would be pleased to answer any questions the Committee may have.